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ABSTRACT

This document traces the evolution of federal protection of the educational rights of language-minority students, beginning with the enactment of Title VI of the Civil Rights Act of 1964 and the first steps of the (then) Department of Health, Education and Welfare (HEW) to ensure local school district compliance through its Office of Civil Rights (OCR). A review of federal civil rights laws concludes that state and local educational agencies have special responsibilities for designing and implementing, with the necessary and appropriate resources, programs that will enable national origin-minority students who are limited in their English language proficiency to surmount language barriers. Furthermore, student academic performance is the ultimate criterion used by the courts to judge whether an agency is fulfilling its legal responsibilities to language-minority students. The effects of the following key federal court decisions and laws are discussed: (1) Lau v. Nichols (1974); (2) the Equal Educational Opportunities Act (EEOA) of 1974; (3) the Education of the Handicapped Act and the Rehabilitation Act of 1973; (4) Serna v. Portales Municipal Schools (1974); (5) Clintron v. Brentwood Union Free School district (1978); (6) Rios v. Reed (1978); (7) Guadaloupe v. Tempe Elementary School District No. 3. (1978); (8) Castaneda v. Pickard (1981); (9) Keyes v. School District No. 1 (1983); (10) Gomez v. Illinois State Board of Education (1987); and (11) Y. S. v. School District of Philadelphia (1988). A list of 94 references is appended. (FMW)

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NATIONAL ORIGIN DESEGREGATION ASSISTANCE
THE MID-ATLANTIC EQUITY CENTER
THE SCHOOL OF EDUCATION THE AMERICAN UNIVERSITY

Legal Responsibilities of Education Agencies Serving National Origin Language Minority Students

by James J. Lyons

TECHNICAL SERIES

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I
INTRODUCTION

As part of the national drive to secure equal educational opportunities for all American students, the three branches of federal government have acted during the last two decades to protect the rights of national origin-minority students and those who are limited in their English proficiency. A substantial body of federal law has developed establishing the rights of language-minority students and defining the responsibilities of school districts serving them. This body of law has been particularly dynamic; it has evolved substantially in its scope and sophistication, and it is still evolving. It is to this body of law and implementing regulation that those who are responsible for state and local educational policies and programs must turn for guidance and direction as they seek to ensure that the ever-increasing numbers of national origin-minority students they serve are provided with the educational opportunities that our democratic society guarantees.

The development of legislation, judicial opinion, and administrative regulation that together make up the relevant body of law regarding language-minority students and the legal responsibilities of the educational agencies that serve them are traced in the pages that follow. The information is meant primarily for school officials and parents. We do not critique the legal reasoning employed by the courts in a particular case or series of judicial decisions, nor analyze the political or ideological significance of Congressional and regulatory action respecting language-minority students. Such matters are more appropriately left to law journals and other publications. Here, we merely hope to provide a guide to the relevant law and regulation as it has been established.

After a brief summary overview, the information is presented in a generally chronological order. A word should be said about the selection of federal court decisions for discussion and the manner of their presentation. The cases were selected primarily because they announce a significant legal holding or set forth an important or distinctive line of legal reasoning. Because judicial decisions involve the application of general laws to specific people and programs, we believe that information on the "educational facts" involved in the cases will be useful to educational planners. Finally, to minimize subjective interpretation of judicial rulings and inappropriate summarization of critical facts, extensive quotations from federal judicial decisions have been set out as text.

II
A SUMMARY OVERVIEW

National Origin Minorities and Civil Rights

The evolution of federal protection of the educational rights of language-minority students is traced in the following pages from the enactment of Title VI of the Civil Rights Act of 1964 and the first steps of the then-Department of Health, Education and Welfare (HEW) to ensure local school district compliance through its Office for Civil Rights (OCR).

Enforcement of Title VI was also sought by parents of national origin-minority students who applied to the federal courts for relief from school districts' practices which deprived their children of equal educational benefits. One such suit, brought by parents of Chinese ancestry against the San Francisco School Board, reached the U.S. Supreme Court in 1974 as *Lau v. Nichols.* The Court's unanimous decision in *Lau* established two very significant points:

1. Equality of educational opportunity is not achieved by merely providing all students with "the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."
2. The Office for Civil Rights has the authority to establish regulations for Title VI enforcement which, among other things, prohibit "discrimination . . . which has that effect even though no purposeful design is present . . . "

This decision of the nation's highest court was almost immediately followed by Congressional action reaffirming the right of language-minority students to equal educational opportunity. Passed within weeks of the *Lau* decision, the Equal Educational Opportunities Act of 1974 (EEOA) imposed on state and local education agencies an affirmative obligation to take "appropriate action to overcome language barriers" confronting language-minority students.

Appropriate Action

Throughout the remainder of the 1970's, national origin-minority parents and local school districts struggled—often against each other—to define the "appropriate action" which would produce the equal education opportunity promised by federal law. The OCR commissioned a task force of experts who formulated guidelines, known as the Lau Remedies, for school districts to follow. These guidelines, in effect, became the standards by which the OCR determined an education agency's compliance with Title VI.

Meanwhile, national origin-minority parents challenged the educational and legal adequacy of programs provided by some local school districts. Here, in three significant cases (*Serna v. Portales, Cintron v. Brentwood* and *Rios v. Reed*), the general legal protections of Title VI and the EEOA are applied by the courts to concrete school issues, including language identification and assessment, student grouping and assignment, curriculum, staffing and training.

Bilingualism-Biculturalism and the Constitution

Social and political controversy often marked discussion about the education of national origin-minority students, especially those of limited English proficiency: a controversy that

seemed to reflect two differing goals for U.S. society. For some, the goal was an America that shared uniformly the language, customs, values, habits and knowledge of an Anglo "mainstream" culture; for others, the goal was a pluralistic society in which peoples of differing languages and cultures could co-exist using the English language and cross-cultural awareness as a national cement. In the view of some pluralists, the right of national origin-minorities to the maintenance of their cultural and linguistic uniqueness is guaranteed by the Constitution. One unsuccessful attempt to gain judicial recogniton of that claimed right is examined in *Guadalupe v. Tempe.*

The 1980's: A New Direction

The direction of federal policy to protect the rights of language-minority students shifted in the early 1980's. Proposed new Title VI Lau Regulations published by the Department of Education (1980) near the end of the Carter Administration were termed inflexible and intrusive by the Reagan Administration and were withdrawn by Secretary of Education Terrell H. Bell as his first official act.

Meanwhile, the federal courts developed flexible, non-intrusive standards for assessing a school district's compliance under the EEOA. In *Castaneda v. Pickard* (1981)* the Fifth Circuit Court of Appeals set forth a three-part test for determining whether a school district has taken the appropriate actions to overcome the language barriers confronting language-minority students. The three tests are:

1. Whether the school system is pursuing a program informed by an educational theory recognized as sound by some experts in the field, or, at least, deemed a legitimate experimental strategy.
2. Whether the programs and practices actually used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school.
3. Whether the school's program succeeds, after a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome.

By the mid-1980's, the Office for Civil Rights had redesigned its Title VI compliance standards for the education of language-minority students. The new—and still current—OCR policy permits school districts to use any method or program that has proven successful or that promises to be successful. OCR's approach for evaluating the adequacy of a district's program for language-minority students under Title VI closely parallels the three-part test formulated in *Castaneda v. Pickard* to judge an education agency's compliance with the EEOA.

Court Decisions After Castaneda

Two court decisions that followed *Castaneda* demonstrate the impact of that case on subsequent rulings regarding the legal responsibilities of educational agencies serving national origin-minority students. In *Keyes v. School District No. 1* (1983), the court utilized the three-part *Castaneda* test to judge Denver's programs for language-minority students under the EEOA. The court found that Denver had failed the test's second element: i.e., the school district had not adequately implemented the program it had chosen to meet the needs of its national origin-minority students.

In a more recent case the court ruled in *Gomez v. Illinois* (1987) that a state education agency can be sued for failure to take the "appropriate action" required by the Equal Educational Opportunity Act. In remanding this case for trial, the court ruled that the three-part *Castaneda* test was applicable to the issues.

---

*Case names are styled as officially reported, without diacritical marks: e.g., "*Castaneda*" appears as "*Castaneda*."

In both *Keyes* and *Gomez*, the courts strongly emphasized the responsibility of state and local education agencies to devote the resources necessary for actual and effective implementation of their planned programs.

Language-Minority Children and Special Education

The rights of national origin-minority children under the Education of the Handicapped Act and the Rehabilitation Act of 1973 are noted here and highlighted by a discussion of the very recent consent decree obtained in *Y. S. v. School District of Philadelphia*. In this case, a class action suit representing Asian students in Philadelphia, plaintiffs claimed they had been denied their rights to equal educational opportunity by—among other improprieties—erroneous placement in special education programs. In March 1988, the District Court for the Eastern District of Pennsylvania accepted an interim remedial agreement between the plaintiffs and the school district, by which the school district agreed to remedy the conditions complained of. The terms of the agreement, as they are discussed here, provide an illuminating guide and precedent for the application of the Education of the Handicapped Act—as well as the Civil Rights Act and the Equal Education Opportunities Act—to the education of national origin-minority students.

A Perspective for Educators

This review of federal civil rights law concludes that state and local agencies have special responsibilities for serving the national origin-minority students who are limited in their English language proficiency; that schools have a legal responsibility for designing and implementing—with the necessary and appropriate resources—programs that will enable such students to surmount language barriers; and that student academic performance is the ultimate criteria used by the courts in judging whether an education agency is fulfilling its legal responsibilities for language-minority students.

III
NATIONAL ORIGIN MINORITIES AND CIVIL RIGHTS

Civil Rights Act of 1964

In 1964, Congress passed milestone legislation that banned discrimination on the basis of "race, color, or national origin" in all Federally-assisted programs. This legislation, Title VI of the Civil Rights Act of 1964 (referred to simply as Title VI in the pages that follow), declared:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[1]

As noted in Senate debate, Title VI was premised on the idea that: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination."[2]

Section 602 of the 1964 Act directed all grant-making Federal departments and agencies to issue "rules, regulations, or orders of general applicability" to effectuate the prohibition against discrimination; and to enforce nondiscrimination "by the termination of or refusal to grant or to continue assistance" or "by any other means authorized by law."

In keeping with Section 602, the Department of Health, Education, and Welfare (HEW) issued regulations applicable to school districts and other recipients of Federal assistance under HEW programs. Then, in 1968, HEW issued the first in a series of guidelines that interpreted the Act and HEW regulations to mean that Federally-assisted "school systems are responsible for assuring that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system."[3]

Office For Civil Rights Memorandum: May 25, 1970

On May 25, 1970, the Director of the Office for Civil Rights (OCR) in HEW sent a memorandum to school districts whose national origin-minority group enrollments exceeded five percent.[4] The memorandum noted "a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils." The memorandum was specific in broadening the meaning of "national origin-minority" beyond Hispanic students. "Similar practices," it continued, "which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese."

To "clarify HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin minority group children," the memorandum identified four basic school district responsibilities:

> (1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

The full significance of the May 25, 1970, memorandum was realized four years later when the United States Supreme Court ruled in *Lau v. Nichols*, the only decision ever rendered by the Supreme Court on the legal responsibilities of school districts for limited-English-proficient national origin-minority students.

Lau v. Nichols

Lau v. Nichols[5] (1974) was a class action suit brought on behalf of limited-English-proficient students of Chinese ancestry enrolled in the 16,500-pupil San Francisco public school system. Of the 2,800 Chinese students, about 1,000 received supplemental instruction in the English language; about 1,800, however, received no special instruction. The plaintiffs alleged that the school district's conduct violated both the Fourteenth Amendment to the Constitution and Title VI of the Civil Rights Act of 1964, but they did not seek a specific remedy—"only that the Board of Education be directed to apply its expertise to the problem and rectify the situation."[6]

First the District Court, and then the Ninth Circuit Court of Appeals, found no violation of the Chinese students' statutory or constitutional rights. The Court of Appeals summarized the District Court's opinion as follows:

> The court expressed well-founded sympathy for the plight of the students represented in this action, but concluded that their right to an education and to equal educational opportunities had been satisfied, in that they received "the same education made available on the same terms and conditions to the other tens of thousands of students in the San Francisco Unified School District . . . " Appellees had no duty to rectify appellants' special deficiencies, as long as they provided these students with access to the same educational system made available to all other students.[7]

The Court of Appeals confined its own analysis to the Fourteenth Amendment claim, noting that its determination of that issue "will likewise dispose of the claims made under the Civil Rights Act."[8] It began that analysis by reviewing post-Brown (1954) school desegregation cases and determining that they concerned "affirmative state action discriminating against persons because of their race,"[9] and concluded that the school district's policy of teaching students in English "does not evince the requisite discrimination to establish a constitutional violation."[10]

An argument made by the Chinese plaintiffs was that the school district's refusal to overcome language deficiencies amounted to a "denial" of educational opportunity. The Appeals Court rejected that argument on the grounds that the school district did not have a "duty" to do so:

> Every student brings to the starting line of his educational career different advantages and disadvantages . . . That some of these may be impediments which can be overcome does not amount to a "denial" by the Board of educational opportunities within the meaning of the Fourteenth Amendment should the Board fail to give them special attention, this even though they are characteristic of a particular ethnic group.[11]

Thus, the Court of Appeals concluded that the school district's duty to non-English-speaking Chinese students "extends no further than to provide them with the same facilities, textbooks, teachers and curriculum as is provided to other children in the district."[12]

In 1974, however, the U.S. Supreme Court unanimously rejected the lower courts' reasoning and overturned their decisions in *Lau*, finding that the San Francisco school district had, indeed, violated Title VI. But, since the Court held that violation of the Chinese students' rights under Title VI was sufficient, it did not consider their claim that their constitutional right to equal protection under the law had been violated.

In writing the Court's decision, Justice William Douglas reviewed the provisions of the California Education Code which provide that "English shall be the basic language of instruction in all schools;" permit a school district to determine "when and under what circumstances instruction may be given bilingually;" and announce "the policy of the state" to insure "the mastery of English by all pupils in the schools." Bilingual instruction is authorized "to the extent that it does not interfere with the systematic, sequential, and regular instruction of all pupils in the English language." Jusice Douglas also noted that:

> Moreover, §8573 of the Education Code provides that no pupil shall receive a diploma of graduation from grade 12 who has not met the standards of proficiency in "English." Moreover, by §12101 of the Education Code (Supp. 1973) children between the ages of six and 16 years are (with exceptions not material here) "subject to compulsory full-time education.[13]

Given the provisions of the California Education Code, Justice Douglas reasoned that:

> Under these state-imposed standards, there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.
>
> Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.[14]

Justice Douglas then cited the general Title VI regulations promulgated by HEW in 1968 which barred actions which are discriminatory in effect even though no purposeful design is present.

> It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations.[15]

Finally, Justice Douglas cited the provisions regarding students' English language deficiencies set out in the May 25, 1970, OCR Memorandum regarding national origin discrimination. School districts, the Court noted, agreed to comply with these requirements as a condition for receiving Federal aid:

> The Federal Government has power to fix the terms on which its money allotments to the States shall be disbursed. Whatever may be the limits of that power, they have not been reached here.[16]

The Court's unanimous opinion in *Lau* was supplemented by two concurring opinions. Though Justice Stewart, the Chief Justice, and Justice Blackmun expressed doubt whether "section 601 of the Civil Rights Act of 1964 standing alone, would render illegal the expenditure of federal funds on these schools,"[17] the Justices noted that HEW's 1970 interpretative guidelines "clearly indicate that affirmative efforts to give special training for non-English-speaking pupils are required by Title VI as a condition to receipt of Federal aid to public schools."[18] After citing recent Supreme Court decisions regarding the validity of administrative regulations, the Court concluded that:

> The Department has reasonably and consistently interpreted section 601 to require affirmative remedial efforts to give special attention to linguistically deprived children.[19]

Finally, Justice Blackmun was joined by the Chief Justice in a second concurring opinion to emphasize their view that "numbers are at the heart of this case,"[20] in which about 1,800 non-English-speaking students were "deprived of any meaningful schooling." Justice Blackmun stated:

> . . . when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guidelines required the funded school district to provide special instruction.[21]

Equal Educational Opportunities Act of 1974

Just weeks after the announcement of the Supreme Court's decision in *Lau*, Congress adopted the Equal Education Opportunities Act (EEOA) as an amendment to the Education Amendments of 1974.[22] Interestingly, since the focus of the EEOA[23] was to limit the use of student transportation to achieve school desegregation, the EEOA amendment was opposed by civil rights and student advocate organizations. But included with the "anti-busing" and pro-"neighborhood school" provisions of the EEOA were new statutory responsibilities placed on school districts serving language-minority students.

EEOA states:

> No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—
>
> (f) the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.[24]

The EEOA did not define "appropriate action;" nor did its legislative history amplify Congress' intent. Congress' silence about this provision has led some commentators to look for possible guidance to other sections of the Education Amendments of 1974—particularly the section reauthorizing and amending the 1968 Bilingual Education Act.

While the Bilingual Education Act (BEA) has never been in any sense mandatory (it has always been a voluntary, competitive assistance-grant program), and thus is quite different from the EEOA's requirement that education agencies take "appropriate action to overcome language barriers," the 1974 amendments to the BEA evinced strong support for educational programs of instruction in both English and the student's native language. Accordingly, some commentators cite the 1974 BEA amendments as justification for the inference that EEOA's "appropriate action to overcome language barriers" includes bilingual education services. The ambiguity of this EEOA provision eventually led the courts to develop a powerful analytical framework for determining whether or not an education agency is fulfilling its EEOA responsibilities to language-minority students (for a discussion of this point see *Castaneda v. Pickard*, Chapter VI).

Finally, the EEOA provided that:

> An individual denied an equal educational opportunity as defined by this part may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States . . ., for or in the name of the United States, may also institute such a civil action on behalf of such an individual.[25]

IV
APPROPRIATE ACTION

The Lau Remedies

A major effort to help school districts understand their responsibilities to national origin-minority students was made on August 11, 1975, when the Education Commissioner of the Department of Health, Education and Welfare (HEW) announced policy guidelines for school districts' compliance with the Title VI requirements that had just been upheld in the *Lau* decision. Those guidelines, prepared for HEW by an expert task force, were widely circulated in memorandum form to school officials and the public, but were never published in the Federal Register. Officially titled "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols", the guidelines are usually referred to as the Lau Remedies, or (usually by the courts) as the "Lau Guidelines".

The Lau Remedies were detailed and specific. They specified approved approaches, methods, and procedures for:

. . . identifying and evaluating national origin-minority students' English language skills;
. . . determining appropriate instructional treatments;
. . . deciding when LEP children were ready for mainstream classrooms;
. . . determining the professional standards to be met by teachers of language minority children.

Significantly, the Lau Remedies went beyond the *Lau* ruling to specify that schools should instruct elementary students through their strongest language until they could participate effectively in English-only classrooms. English as a Second Language (ESL) instruction was prescribed for all students for whom English was not the strongest language. Finally, any school districts that wished to rely exclusively on ESL would be obliged to demonstrate that their programs were as effective as the bilingual programs described in the Lau Remedies.

Although the Lau Remedies were criticized as poorly written and were never promulgated as formal regulations, they quickly evolved into the *de facto* standards that OCR staff applied for determining an education agency's compliance with Title VI under *Lau*. Between 1975 and 1980, OCR carried out nearly six hundred Title VI compliance reviews which led to the negotiation of 359 school district Lau plans by July 1980 with virtually all of them based on the Lau Remedies. And the Lau Remedies were frequently cited by Federal courts in cases involving claims both under Title VI and the EEOA.

Court-Ordered Programs

In the years between the landmark Supreme Court *Lau* decision and 1980, a number of important court findings shaped the meaning of EEOA's "appropriate action" provision, the Title VI requirements upheld in *Lau*, and the educational rights of national origin-minority students before the law. Some of the most important cases of those years are discussed below in enough detail to get at the "educational facts" considered by the courts. Clearly the courts were not only concerned with national origin-minority students' opportunity to learn English, but also with schools' responsibility to provide "meaningful education."

Serna v. Portales Municipal Schools[26]

One of the first cases to receive appellate review following the *Lau* decision was *Serna v. Portales Municipal Schools* (1974). After a district court decision supported an action brought on behalf of the Spanish-surnamed public school students of Portales, New Mexico, the school district appealed. The Tenth Circuit Court of Appeals summarized the students' complaint as follows:

> Appellees [Serna] in their complaint charge appellant [Portales Municipal Schools] with discriminating against Spanish surnamed students in numerous respects. Allegedly, there is discrimination in appellants' failure to provide bilingual instruction which takes into account the special educational needs of the Mexican-American student; failure to hire any teachers of Mexican-American descent; failure to structure a curriculum that takes into account the particular education needs of Mexican-American children; failure to structure a curriculum that reflects the historical contributions of people of Mexican and Spanish descent to the State of New Mexico and the United States; and failure to hire and employ any administrator, including superintendents, assistant superintendents, principals, vice-principals, and truant officers of Mexican-American descent. This failure to provide equal educational opportunities deprived appellees and all others similarly situated of their right to equal protection of the laws under the Fourteenth Amendment.[27]

The Court of Appeals reviewed the evidence presented in the district court trial noting:

> Undisputed evidence shows that Spanish surnamed students do not reach the achievement levels attained by their Anglo counterparts. For example, achievement tests, which are given totally in the English language, disclose that students at Lindsey [a Portales elementary school whose student enrollment was 86 percent Spanish surnamed] are almost a full grade behind children attending other schools in reading, language mechanics and language expression. Intelligence quotient tests show that Lindsey students fall further behind as they move from the first to the fifth grade. As the disparity in achievement level increases between Spanish-surnamed and Anglo students, so does the disparity in attendance and school dropout rates.[28]

A primary issue considered by the Appeals Court concerned the scope and content of the educational plan that the district court had ordered. That plan was considerably more extensive than what had been proposed by the district. The court's plan required:

I. Curriculum

A. Lindsey Elementary

All students in grades 1-3 shall receive 60 minutes per day bilingual instruction. All students in grades 4-6 shall receive 45 minutes per day bilingual instruction. These times are to be considered a minimum . . . .

A testing system shall be devised for determining the adequacy of the above established time periods with ensuing adjustments (either an increase or decrease in bilingual instruction) as needed.

B. James, Steiner and Brown Elementary

All Spanish-speaking students in grades 1-6 shall receive 30 minutes per day of bilingual instruction. This program should be made available to interested non-Spanish speaking students as funding and personnel become available . . ..

A bicultural outlook should be incorporated in as many subject areas as practicable.

Testing procedures shall be established to test the results of the bilingual instruction and adjustments made accordingly.

C. Junior High

Students should be tested for English language proficiency and, if necessary, further bilingual instruction should be available for those students who display a language barrier deficiency.

D. High School

An ethnic studies course will be offered in the 1973-74 school year as an elective. This course should be continued and others added in succeeding years.

The minimum curriculum schedule set forth in A through D above is not intended to limit other bilingual programs or course offerings currently available in the Portales school system or which will become available in the future.

II. Recruiting and Hiring.

A special effort should be made to fill vacancies with qualified bilingual teachers. Recruiting should be pursued . . . .

III. Funding.

Defendants appear to have complied with the court's directive to investigate and utilize sources of available funding. Efforts should continue in seeking funding for present as well as future programs which will help achieve equality of educational opportunities for Spanish-surnamed students.[29]

As to the district court's finding that the Mexican-American students' constitutional right to equal protection of the law had been denied, the Appeals Court ruled:

> . . . we choose to follow the approach adopted by the Supreme Court in *Lau*; that is, appellees were deprived of their statutory rights under Title VI of the Civil Rights Act. As in *Lau*, . . . while Spanish surnamed children are required to attend school, and if they attend public schools the courses must be taught in English, Portales school district has failed to institute a program which will rectify language deficiencies so that these children will receive a meaningful education. The Portales school curriculum, which has the effect of discrimination even though probably no purposeful design is present, therefore violates the requisites of Title VI and the requirement imposed by or pursuant to HEW regulations.[30]

Against the school district's argument for a more modest plan of its own devising, the Appeals Court found that:

> There was adequate evidence that appellants' proposed program was only a token plan that would not benefit appellees.[31]

Cintron v. Brentwood Union Free School District[32]

In the 1978 *Cintron* case, a class action suit on behalf of 3,700 Puerto Rican and other Hispanic students was brought before the Federal District Court for the Eastern District of New York. The suit sought to prevent the 19,000-student Brentwood Union Free School District from restructuring its bilingual program, Project Avelino, for which it intended to substitute a "Plan V." Plaintiffs cited Title VI (CRA 1964), the Equal Educational Opportunities Act of 1974, and the Civil Rights Act of 1871 in their challenge of the district's plans.

Brentwood argued that declining student enrollment necessitated teaching staff reductions; it cited a 1975 state court order requiring teacher layoffs to be carried out on the basis of a single tenure system as cause for the districts' dismissal of 15 bilingual teachers with the least seniority and 2 part-time bilingual teachers, leaving the district with only 7 bilingual teachers; and it maintained that "Plan V" was needed so that bilingual education could be provided with the reduced teaching staff.

The court noted that Project Avelino was offered to Hispanic students whose dominant or exclusive language was Spanish. Beginning in kindergarten and the first grade, the content curriculum was taught in Spanish and students received ESL instruction as well. The percentage of English use increased—and Spanish use decreased—as students progressed from year to year. The expectation was that by the sixth grade students would be successful in English-only classes.

The court noted that in Project Avelino:

> A bilingual teacher and aide teach all substantive courses, and give individual attention to those students within the class who have a greater capacity to absorb English instruction. . . . Hispanic students also receive instruction in the history and culture of their countries of origin. . . . Only art, music, physical education, and other specialty subjects are taught exclusively in English. Special instructors relieve the bilingual teachers during such periods.[33]

The court also pointed out that in Project Avelino:

> The bilingual program segregates the Spanish speaking students from the rest of the student body. The children remain in the same classroom except for physical education and lunch. Yet, during lunch hour and physical education period, they tend to continue as the same identifiable Spanish speaking group. Moreover, students who have attained the level of proficiency in English which would permit learning in the English language are nevertheless retained in the program for the purpose of maintaining their Spanish cultural level. No student has been transferred from the bilingual program to the regular English curriculum in the history of Project Avelino.[34]

Under "Plan V," the program proposed by the school district, the seven elementary schools would offer an ESOL center. A Spanish basic skills room would provide remedial help and cultural instruction. Hispanic students would spend most of the school day with English speaking students where such subjects as reading, math, and social studies would be taught in English. Non-English speaking students would also be required to attend the Spanish basic skills room for periods ranging from one-half hour to one and one-half hours depending upon the student's English comprehension level. Bilingual teachers there would offer remedial help, explaining in Spanish the subject matter covered in the monolingual homeroom. Cross-cultural studies and basic language arts (i.e., Spanish language, literature and comprehension) would also be taught in the basic skills room. The court noted that in "Plan V's" basic skills room:

> Groupings of kindergarten, first and second grade, third and fourth grade, and fifth grade students, never exceeding twenty in number, would be scheduled to assemble there each period. While the majority of students would receive cross-cultural or language art instruction from bilingual teachers, the aide might devote her attention to three or four students who needed remedial help in the substantive courses covered in the English homeroom.
>
> The school board estimates that under "Plan V," each bilingual teacher and aide will teach nine half-hour periods. Each day, kindergarten students would be slotted for one half-hour in the morning or one half-hour in the afternoon; first and second graders for three half-hour periods; third and fourth graders for one half-hour period plus an extra time period; while fifth graders will have the option of attending the one half-hour period assigned to fourth graders or specially designated "extra help classes." No maximum limit is placed on the time that a student might attend the basic skills room; the only limitation imposed is the class size. But, a child who attends during a period for which his class is not scheduled runs the risk of finding himself or herself at a significantly different level of instruction.[35]

The Memorandum of Decision also set forth findings of fact regarding "Identification of Students for Bilingual Instruction" under both Project Avelino and "Plan V."

> Students who have English language deficiencies are identified at Kindergarten registration by a Spanish speaking social worker or psychologist. When an entrant requiring help is identified, the problem is discussed with the parent. The parents have the option of choosing a class taught in English, an ESOL program or a bilingual program. No reliable method, however, is used to identify students in the upper school grades who have English language deficiencies. It now depends on the awareness of the classroom teacher who might find that a child is underachieving because of an English language deficiency. "Plan V" would not significantly change the method of identifying kindergarten students having difficulties in the English language.[36]

In its discussion of law applicable to the case, the court noted that the Lau Remedies required a school district to:

> (1) assess the language ability of the student;
>
> (2) identify the nature and extent of the students' educational needs and utilize the most effective teaching style to meet those needs;
>
> (3) implement the type of educational programs dependent upon the degree of linguistic proficiency of the students in question, and;
>
> (4) train bilingual teachers. [37]

The court found that Project Avelino, as administered, violated both the EEOA and the Lau Guidelines. First, Spanish speaking students in the project were "kept separate and apart from English speaking students in music and art in violation of the 'Lau Guidelines.' "[38] Also, the program failed to provide for exiting students whose English language proficiency would enable them to understand regular English instruction. "Fifty-three students were retained in Project Avelino after it had served its mandated objective." To that extent, the administration of the bilingual program was a perversion of the purpose and a misuse of funds.[39]

The court held that "Plan V" also violated the rights of non-English speaking students since:

> The underlying theory of "Plan V" is an immersion into English language and culture and a subordination of Spanish and Hispanic culture with a view towards accelerating the acquisition of English. This theory overlooks the declaration of policy and the findings of Congress as embodied in Section 105(a)(1) of the Bilingual Education Act, the statutory right of the non-English speaking child recognized under section 204 of the Equal Education Opportunity Act of 1974, Section 601 of the Civil Rights Act of 1964, the teaching of Lau, and the suggestions of the Lau guidelines . . . .Plan V is unacceptable. While integration is encouraged, there is no assurance that language deficient children in the upper grades will be identified. If they are, there is the continued threat of insufficient remedial assistance. For if a child cannot comprehend principles of math or science taught in the English homeroom, he will not be able to explain his or her problem to the bilingual teacher in the Spanish basic skills room who is expected to provide remedial help. Moreover, children continually in need of remedial assistance, who might spend more time in the basic skills room than they are scheduled for, run the risk of missing planned instruction thus further retarding their educational progress.[40]

Finally, the court directed Brentwood to submit a plan in compliance with the Lau Guidelines. The court recognized that the task was not an easy one:

> The goal is instruction by competent bilingual teachers in the subject matter of the curriculum while at the same time teaching non-English-speaking children the English language. The time limitation of the school day is an obstacle that may be overcome by supplementary programs designed to achieve both goals. . . .

The court listed specific provisions of the plan the district was ordered to develop. It must:

> . . . contain more specific methods for identifying on admission those children who are deficient in the English language and for monitoring the progress of such children by the use of recognized and validated tests to ascertain achievement levels and proficiency in the English language. It should have a training program for bilingual teachers and bilingual aides. The program must be both bilingual and bicultural. It must provide a method for transferring students out of the program when the necessary level of English proficiency is reached. It should not isolate children into racially or ethnically identifiable classes, but it should encourage contact between non-English and English speaking children in all but subject matter instruction (in the earliest classes i.e., kindergarten and first grade, where subject matter is of lesser importance, the program should emphasize the need for contact between non-English and English speaking children).[41]

Rios v. Reed[42]

Ten months after the ruling in the *Cintron* case, another class action suit under Title VI and the 14th Amendment came before the U.S. District Court for the Eastern District of New York. The suit was brought on behalf of 800 Puerto Rican students against the 11,000-student Pastchogue-Medford School District. As in *Cintron*, the court ordered the school district to implement a plan in keeping with the Lau Remedies.

Among the deficiencies that the court found in the district's "transitional bilingual program" for language minority-students were:

> . . . that the supervisor of the bilingual education program did not speak Spanish, was unfamiliar with ESL, and had no education or training in bilingual education.
>
> . . . school principals, responsible for evaluating bilingual teachers' performance, who were

unfamiliar with bilingual teaching methods and did not understand Spanish.

. . . bilingual teachers who did not know Spanish; most lacked "formal training in the methodology of Spanish bilingual teaching."[43]

The court made the following findings with regard to the district's "Transitional Program:"

. . . As defendants view their obligation, it is to "teach the child to be able to read and write English within three years."

. . . Students with English language deficiencies are instructed in English with their English speaking counterparts unless the classroom teacher recognizes a need for bilingual instruction. . . . Often a student's language deficiency comes to the attention of a bilingual teacher only in an informal manner, e.g., in casual conversation among teachers at lunch . . . .

. . . No textbooks in Spanish are available. English language deficient students receive an average of 40 to 50 minutes a day in subject matter instruction in Spanish and the remainder of the day in English. . . . The school distict's bilingual education program is basically a course in English. English is taught to Spanish speaking children during periods when their English speaking counterparts are instructed in science and social studies.[44]

The court also found an absence of adequate testing and monitoring of students' English proficiency acquisition and a lack of adequate criteria and procedures for exiting students from the "bilingual" program. The court ordered the Pastchogue-Medford School District to design and implement a plan consistent with the Lau Remedies and specified provisions similar to those it prescribed for *Cintron*, above. It ruled:

. . . plaintiffs' charge that they are being denied equal educational opportunity is not sufficiently answered by defendant's efforts to show that their program will eventually attain some desirable results. A denial of educational opportunities to a child in the first years of schooling is not justified by demonstrating that the educational program employed will teach the child English sooner than a program comprised of more extensive Spanish instruction. While the District's goal of teaching Hispanic children the English language is certainly proper, it cannot be allowed to compromise a student's right to meaningful education before proficiency in English is obtained.[45]

V
BILINGUALISM-BICULTURALISM AND THE CONSTITUTION

Guadalupe Organization v. Tempe Elementary School District No. 3[46]

The suit decided in *Guadalupe v. Tempe* was originally filed before *Lau* came before the Supreme Court. The case was different from the others reviewed above in the nature and extent of the rights claimed by the plaintiffs, and it is important for the constitutional argument used by the Court of Appeals to make its finding.

The class action suit on behalf of all non-English speaking Mexican-American and Yaqui Indian students attending Tempe (Arizona) Elementary School District No. 3 alleged violations of the Fourteenth Amendment, Title VI, and the EEOA, and sought to compel the 12,280-student school district to provide them with bilingual-bicultural education. Although Mexican-American and Yaqui Indian students made up about 18 percent of the district's enrollment, 92% of the students in the Guadalupe elementary school were Mexican-American or Yaqui Indian. When a district court rejected their suit against Tempe district, the plaintiffs appealed to the Ninth Circuit Court of Appeals, which then reviewed the case.

The plaintiffs in *Guadalupe* did not "complain of the school district's efforts to cure existing language deficiencies of non-English-speaking students."[47] Rather, they claimed they had been denied

> . . . instruction that "has as its goal having a child graduate at each grade level from kindergarten to fourth year in high school competent and functional in reading, writing, and comprehension both in the child's own language, Spanish, and the language of the majority culture, English." (And) in which "all courses of instruction, testing procedures, instructional materials [are] bilingual and bicultural." Finally, appellants contend that the school district failed to reflect in its program of instruction the particular history of the parents of each child attending the school.[48]

The Court of Appeals upheld the district court's summary judgement for the Tempe school district. Regarding the plaintiff's Fourteenth Amendment claim, the court wrote:

> We hold that the appellees fulfilled their equal protection duty to children of Mexican-American and Yaqui Indian origin when they adopted measures, to which the appellees do not object, to cure existing language deficiences of non-English-speaking students. There exists no constitutional duty imposed by the Equal Protection Clause to provide bilingual-bicultural education such as the appellants request . . . Nor, as far as this record reveals, does the (district) program fail "to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process."[49]

The courts discussed at some length the plaintiffs' consitutional claim,

> . . . fully aware of the serious nature of the appellants' contentions. Our analysis returns us to the foundations of organized society as manifested by the nation-state. We commence by recognizing that the existence of the nation-state rests ultimately on the consent of its people . . .
>
> Linguistic and cultural diversity within the nation-state, whatever may be its advantages from time to time, can restrict the scope of the fundamental compact. Diversity limits unity . . .
>
> Multiple linguistic and cultural centers impede both the egress of each center s own and the ingress of all others . . . (and) to reinforce affection towards insiders, hostility toward outsiders develops . . .
>
> Whatever may be the consequences, good or bad, of many tongues and cultures coexisting within a single nation-state, whether the children of this Nation are taught in one tongue and about primarily one culture or in many tongues and about many cultures cannot be determined by reference to the Constitution. We hold, therefore, that the Constitution neither requires nor prohibits the bilingual and bicultural education sought by the appellants. Such matters are for the people to decide.[50]

(The court found that "the cases which have dealt with constitutional claims to bilingual and bicultural education are not inconsistent with our holding.")

Similarly, the Appeals Court ruled against plaintiff's Title VI claim. It found that the district had provided:

> . . . remedial instruction in English which appellants appear to admit complies with *Lau's* mandate makes available the meaningful education and the quality of educational opportunity that Section 601 requires. There is no suggestion that appellees' remedial program operates as an educational deadend or permanent track.[51]

Finally, the court rejected plaintiff's EEOA claim, holding that "appropriate action" need not include the "bilingual-bicultural education the appellants seek."[52]

VI
THE 1980'S: A NEW DIRECTION

1980 Notice of Proposed Rulemaking (Title VI)

The ambiguity about the legal status of the never-published Lau Remedies has been noted. While they formed the basis of OCR's compliance reviews and were repeatedly cited by courts as the standard for programs for language minority students, they had neither the force of law nor of official Departmental regulation. In 1978, when an Alaskan school district disputed OCR's use of the Lau Remedies for determining compliance with Title VI, the Department of Health, Education and Welfare agreed, in a court-approved consent decree, to replace the Lau Remedies with formally published compliance guidelines.[53]

To fulfill its part of the consent decree, in 1980 the newly-formed Department of Education published in the Federal Register a Notice of Proposed Rulemaking (NPRM)[54] which required school districts receiving Federal assistance to provide special instruction to all limited-English-proficient (LEP) national origin-minority students and, under most conditions, to provide some native-language instruction in academic subjects to LEP students who were more proficient in their native language than in English. Possibly in response to prior criticism about "ambiguities" in the Lau Remedies, the Department's 1980 NPRM included objective specifications for:

. . . the identification of language-minority students;
. . . the assessment of their English proficiency;
. . . the provision of proper instructional services;
. . . criteria governing exit from special instructional programs.

The highly detailed and prescriptive standards set out in the 1980 NPRM drew widespread criticism, and in response to its solicitation of public comments the Department of Education received over 4,000 letters, most of which objected to one or more of the NPRM's provisions. There were calls for Congressional action in response to the NPRM, and after meeting with congressional leaders, Education Secretary Shirley Hufstedler voluntarily suspended finalization of the new Title VI standards.

As one of his first public acts as Secretary of Education in the newly-installed Reagan Administration, Terrell H. Bell formally withdrew the 1980 NPRM on February 2, 1981. Secretary Bell did not issue new policy guidance beyond vowing:

> We will protect the rights of children who do not speak English well, but we will do so by permitting school districts to use any way that has proven to be successful.

How OCR has translated the Secretary's words into policy and practice was discussed in Chapter V.

Castaneda v. Pickard

Perhaps the most significant court decision affecting language minority education, after *Lau*, did not impose an instructional program on any school district. But in 1981, in *Castaneda* v.

Pickard, the Fifth Circuit Court of Appeals decision created a powerful analytical framework for determining whether or not an education agency is fulfilling its EEOA responsbilities to take "appropriate action" on behalf of its language-minority students. *Castaneda* has strongly affected subsequent court rulings under Title VI and the EEOA as well as OCR's Title VI enforcement policies and procedures. The *Castaneda* decision came in a suit brought against the Raymondville, Texas, Independent School District (RISD) by the parents of Mexican-American students who made up 80-100 percent of the school population in the five schools operated by the RISD.

Plaintiffs in *Castaneda* claimed that the RISD violated the Fourteenth Amendment, Title VI, and EEOA rights of Mexican-American students by:

> . . . unlawfully discriminating against them by using a classroom ability-grouping system based on racially and ethnically discriminatory criteria and resulting in impermissible classroom segregation;
> . . . discriminating in the hiring and promotion of Mexican-American faculty and administrators;
> . . . failing to implement adequate bilingual education programs to overcome the linguistic barriers that impede the language minority students' equal participation in the educational program of the district.[56]

In 1978, the U.S. District Court for the Southern District of Texas entered judgement in favor of the school district, determining that the policies and practices of the RISD did not violate any constitutional or statutory rights of the plaintiffs; the Mexican-American parents appealed.

The Court of Appeals took sharp issue with the district court's handling of the case, rebuking it for failing to make findings of fact as to whether the RISD had segregated and discriminated against Mexican-American students in the past. The Court of Appeals pointed out that:

> Plaintiffs raised the issue of RISD's past discrimination in their pleadings and introduced substantial evidence in support of this claim in the proceedings before the district court; thus, the district court's failure to make findings regarding the history of the district and whether vestiges of past discriminatory practices currently exist in the district cannot be excused on the grounds that these issues were not properly before the court. The absence of findings on these issues seriously handicaps our review . . .[57]

The Court of Appeals reversed the district court's decision on the issues of student ability grouping and discrimination in employment, remanding those portions of the case for proper analysis and essential finding of facts. Regarding ability grouping, the Court of Appeals advised:

> Language grouping is . . . an unobjectionable practice, even in a district with a past history of discrimination. However, a practice which actually groups children on the basis of their language ability and then identifies these groups not by a description of their language ability but with a general ability label is, we think, highly suspect. . . . Even in the absence of such a history, we think that if the district court finds that the RISD's ability grouping practices operate to confuse measures of two different characteristics, i.e., language and intelligence, with the result that predominantly Spanish speaking children are inaccurately labeled as "low ability," the court should consider the extent to which such an irrational procedure may in and of itself be evidence of a discriminatory intent to stigmatize these children as inferior on the basis of their ethnic background.[58]

The Court of Appeals agreed with the lower court that "Title VI, like the Equal Protection Clause, is violated only by conduct animated by an intent to discrimination and not by conduct which, although benignly motivated, has a differential impact on persons of different races."[59] (However, the view that only intentional discrimination is barred by Title VI and Federal implementing regulations was rejected by a majority of the Justices in *Guardians Association v. Civil Service Commission of the City of N.Y.* 463 U.S. 582) (1983)

The court then rejected the argument that RISD's programs were educationally unsound and that the district goals overemphasized the development of English language skills to the detriment of the child's overall cognitive development.[60] The court also dismissed the Lau Remedies as not being "the sort of administrative document to which we customarily give great deference in our determinations of compliance with a statute."[61]

The feature of the Court of Appeal's opinion in *Castaneda* that gives it landmark significance came in response to the claim that RISD's language remediation programs violated EEOA. Although the Appeals Court did not rule on the ultimate merits of this claim, it developed an analytical framework and a set of basic standards for resolving EEOA claims which have been followed by other federal courts and the Department of Education's Office for Civil Rights.

The Appeals Court argued that in EEOA Congress intended to go beyond the essential requirement of Lau that the schools do something, and to impose through the use of the term "appropriate action" a more specific obligation on state and local education authorities:

> We think Congress' use of the less specific term, "appropriate action," rather than "bilingual education," indicates that Congress intended to leave state and local educational authorities a substantial amount of latitude in choosing the programs and techniques they would use to meet their obligations under the EEOA. However, by including an obligation to address the problem of language barriers in the EEOA and granting limited English speaking students a private right of action to enforce that obligation in §1706, Congress also must have intended to insure that schools made a genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students and deliberately placed on federal courts the difficult responsibility of determining whether that obligation has been met.[62]

Then the court confronted the toughest question—what does "appropriate" mean?

> Congress has provided us with almost no guidance, in the form of text or legislative history, to assist us in determining whether a school district's language remediation efforts are "appropriate." . . . Confronted, reluctantly, with this type of task in this case, we have attempted to devise a mode of analysis which will permit ourselves and the lower courts to fulfill the responsibility Congress has assigned to us without unduly substituting our educational values and theories for the educational and political decisions reserved to state or local school authorities or the expert knowledge of educators.[63]

The Court of Appeals then formulated the following three-part test to measure compliance with the EEOA requirement of "appropriate action."

> 1) Theory: The court's responsibility, insofar as educational theory is concerned, is only to ascertain that a school system is pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy.
>
> 2) Practice: The court's second inquiry would be whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school. We do not believe that it may fairly be said that a school system is taking appropriate action to remedy language barriers if, despite the adoption of a promising theory, the system fails to follow through with the practices, resources and personnel necessary to transform the theory into reality.
>
> 3) Results: If a school's program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action as far as that school is concerned. We do not believe Congress intended that under Section 1703(f) a school would be free to persist in a policy which, although it may have been "appropriate" when adopted, in the sense that there were sound expectations for success and bona fide efforts to make the program work, has, in practice, proved a failure.[64]

The Fifth Circuit supplemented its "Theory-Practice-Results" analysis with the following "mission" standards:

> Limited English speaking students entering school face a task not encountered by students who are already proficient in English. Since the number of hours in any school day is limited, some of the time which limited English speaking children will spend learning English may be devoted to other subjects by students who entered school already proficient in English. . . . We understand §1703(f) to impose on educational agencies not only an obligation to overcome the direct obstacle to learning

which the language barrier itself poses, but also a duty to provide limited English speaking ability students with assistance in other areas of the curriculum where their equal participation may be impaired because of deficits incurred during participation in an agency's language remediation program. If no remedial action is taken to overcome the academic deficits that limited English speaking students may incur during a period of intensive language training, then the language barrier, although itself remedied, might, nevertheless, pose a lingering and indirect impediment to these students' equal participation in the regular instructional program. We also believe however, that §1703(f) leaves schools free . . . to determine the sequence and manner in which limited English speaking students tackle this dual challenge so long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.[65]

As for the Raymondville Independent School District, the Court of Appeals applied its three-part test and decided:

(1) The district's bilingual language remediation program was based on a sound theory.

(2) The court expressed concern about the adequacy of RISD's program implementation, citing unqualified teachers [66] and inadequate testing, including the failure to test students' educational progress in their own language.[67]

(3) The court declined to proceed to the "results" compliance test even though plaintiffs complained that the limited English speaking students in the district's bilingual education program do not achieve at the same level as monolingual students.[68] Such inquiry, according to the court, should come after the inadequacies in the implementation of the RISD's program have been corrected.[69]

OCR Enforcement Policy in the Mid-1980's

When Education Secretary Bell withdrew the Department of Education's 1980 Notice of Proposed Rulemaking which would have established Departmental guidelines for Title VI compliance, he promised to "protect the rights of children who do not speak English well." Subsequently, OCR staff developed a new set of Title VI Lau compliance procedures and standards. [70] Like the 1975 Lau Remedies, the new OCR compliance standards have not been published in the Federal Register, and thus lack the full force of formal regulations. Consistent with Secretary Bell's announced intention of "permitting school districts to use any way that has proven to be successful," current OCR guidelines refrain from prescribing educational approaches.

Current OCR guidelines are grounded on the Title VI requirement announced in OCR's (HEW) May 25, 1970, Memorandum (discussed above), affirmed in the *Lau* decision, that school districts serving limited-English-proficient students must "take affirmative steps" to open their instructional programs to language-minority students.[71] In carrying out this affirmative obligation, current OCR policy provides that "school districts may use any method or program that has proven successful, or may implement any sound educational program that promises to be successful."[72]

OCR's Title VI language-minority compliance procedures focus on two general areas:

1) . . . whether there is a need for the district to provide an alternative program designed to meet the educational needs of all language minority students.

2) . . . whether the alternative district program is likely to be effective in meeting the educational needs of its language minority students.[73]

According to OCR, the first question will be answered by:

. . . determining whether language minority students are able to participate effectively in the regular instructional program. When they are not, the school district must provide an alternative program. In cases where the number of these students is small, the alternative program may be informal.[74]

To answer the second question—whether the alternative district program is likely to be effective—the OCR procedures propound three sub-questions which generally follow

Castaneda's three-part test of a language remediation program under the EEOA. The three questions OCR uses to determine whether an alternative instruction program for LEP language-minority students satisfies Title VI are:

1) Is the alternative program based on a sound design?

2) Is the alternative program being carried out in such a way as to ensure the effective participation of language minority students as soon as reasonably possible?

3) Is the alternative program being evaluated by the district and are modifications being made in the program when the district evaluation indicates they are needed?[75]

There is little basis on which to judge the impact or efficacy of OCR's new Title VI compliance procedures and standards regarding language-minority students. As yet unpublished, the standards and procedures have attracted little public attention; nor have they been cited in reported court decisions.

More importantly perhaps, the extent to which the new procedures have actually been implemented by OCR staff conducting compliance reviews and complaint investigations is unclear. The June 4, 1986, edition of *Education Week*[76] reported a sharp falling-off of OCR Title VI Lau enforcement activity during 1980-1985, the period immediately prior to formal adoption of OCR's new language-minority compliance procedures. OCR's Title VI enforcement program has been the subject of recent Congressional oversight, and the House Education and Labor Committee is currently conducting a staff investigation of OCR's total enforcement effort, including activities to protect language-minority students.

VII
COURT DECISIONS AFTER CASTANEDA

Keyes v. School District No. 1[77]

In 1983, the U.S. District Court for the District of Colorado ruled on the adequacy of the Denver public school district's program for limited-English-proficient Hispanic students. The 1983 decision had been preceded by a series of judicial decisions and orders respecting Denver's failure to achieve unitary status following years of *de jure* segregation of Black and Hispanic students. The court avoided the constitutional and Title VI challenges to Denver's program raised by plaintiffs' counsel and focused instead on the question of whether Denver had satisfied the affirmative requirements of the EEOA respecting language-minority students.

The district court reviewed in detail:

1) . . . district statistics on LEP students;
2) . . . the school district's curriculum;
3) . . . LEP student testing;
4) . . . staffing of Denver programs for LEP students;
5) . . . the administration, growth, and funding of Denver's programs for LEP students.

Based on this factual information, and utilizing the three-part analysis set down in *Castaneda*, the court addressed the following compliance questions:

Has Denver designed a program based on a sound educational theory? Noting that "Denver has elected what is called a 'transitional bilingual approach,' " the court found that:

> The parties are in agreement and the testifying experts have all said that this is a recognized and satisfactory approach to the problem of educating LEP children. Mr. Martinez testified that this is a two-pronged approach. One is to provide the student with an opportunity to develop English language skills and the other is to provide content area to him in a language he understands while he is learning English. The experts agree that this approach not only should enable LEP students to enter the mainstream of instruction, it also helps to overcome the emotional barriers of fear, frustration, discouragement and anger by providing understandable content instruction in their native language during the transitional phase.[78]

Has Denver pursued its program with adequate resources, personnel and practices? Here the court focused on deficiencies in Denver's elementary bilingual program, "the best which Denver has to offer LEP children." First the court looked at the qualifications of program staff:

> The key to an effective elementary bilingual classroom is the ability of the teacher to communicate with the children. Thus, if it is expected that understandable instruction will take place, there must be assurance that the teachers have the necessary bilingual skills. This is not the fact in Denver.
>
> Teachers are designated as bilingual in Spanish and English based on an oral interview. There are no standardized testing procedures to determine the competence of the bilingual teacher in speaking and writing both languages. Accordingly, it is inappropriate to assume that effective communication is taking place even with the fortunate few Lau A Spanish speaking students who are assigned to bilingual classrooms with bilingual teachers in the twelve elementary schools having that problem.

[Ed. Note: Denver follows the "Lau Remedy" classification of language-minority students—"Lau students"—that distinguishes five categories of English proficiency from "Lau A" or monolingual non-English speaker through various stages of bilingualism to "Lau E" or monolingual English speaker.]

Given the district's declaration of a transitional bilingual policy and obvious need of the services of competent bilingual teachers, it would be reasonable to expect that the placement of teachers with those skills would be matched with the programs in the designated schools. That is not the case in Denver.

The assignment of teachers to bilingual schools in the defendant district is accomplished by the same procedure used for the assignment of teachers to all other schools. Teachers with tenure have preferential rights for assignment to vacancies according to their seniority. Accordingly, a monolingual English teacher may fill a vacancy in a bilingual classroom at a bilingual school even though a qualified bilingual teacher with less seniority is available for placement there. Likewise, tenured monolingual teachers cannot be removed from a bilingual classroom to create a vacancy for a competent bilingual teacher. The justification for this contradiction of common sense is that the movement and placement of teachers is restricted by personnel regulations and contractual commitments.[79]

Moreover, the court found that the personnel responsible for conducting the ESL component of the Denver program were inadequately trained and qualified.

The ESL component of the program is being delivered by ESL designated instructors who have not been subject to any standardized testing for their language skills and they receive very little training in ESL theory and methodology. The record shows that in the secondary schools there are designated ESL teachers who have no second language capability. There is no basis for assuming that the policy objectives of the program are being met in such schools. The tutorial program relies on paraprofessionals who may have second language skills but who are not required to show any competence or experience with content area knowledge, or teaching techniques, and who receive scant in-service training.[80]

Beyond the lack of qualifications and training of staff responsible for the instruction of Denver's LEP students, the court identified other deficiencies in the scope and structure of the district's program:

What appears from the record is that outside of the bilingual classrooms, the Lau A children and perhaps the Lau B children are not receiving content area instruction in a language which they understand and that, at best, some remedial oral English training is being given to them.

The emphasis on the acquisition of oral English skills for LEP students is another cause for concern. The record indicates that on the average, ESL instruction by a teacher or tutor is limited to 40 minutes per day of remedial English instruction using an audiolingual approach. While there is no doubt that acquisition of oral English skill is vital for the students' participation in classroom work, it is equally obvious that reading and writing skills are also necessary if it is expected that "parity in participation" in the total academic experience will be achieved. Another matter of concern is the apparent disregard of any special curriculum needs of Lau C children. The defendant considers Lau C children to be bilingual, presumably with equal proficiency in English and another language. That view disregards the other element of the applicable definition in the Colorado Language Proficiency Act that the English language development and comprehension of such bilingual students is at or below the district mean or below an acceptable proficiency level on a national standardized test or a test developed by the Colorado Department of Education. Lau C students are within the class of persons for whom there is a statutory duty under both the Colorado Act and section 1703(f). Denver is not meeting that obligation.

The court also cited the district's failure to adopt adequate tests to measure the results of its program, holding that "the lack of adequate measurement of the effects of [the district's program] is a failure to take reasonable action to implement its transitional bilingual policy.[82]

Finally, the court dismissed Denver's citation of Justice Blackmun's concurring opinion in *Lau* that the numbers of students involved justify its program, noting that "under section 1706, any individual denied an equal educational opportunity as defined in the Act may institute a civil action for private relief."[83]

Has Denver's transitional bilingual program achieved satisfactory results? Given Denver's inadequate implementation of its transitional bilingual program, the court declined to rule on this third compliance question suggested by the *Castaneda* approach. The court did write, however:

> What is subject to comment are two very significant indications of failure in achieving the objective of equal educational opportunity for LEP children. One is the number of Hispanic "drop-outs" peaking in the tenth grade. There is an interesting relationship between that surge of dropouts and the sharp decline in the overall number of Lau C category students between grades 7-9 and grades 10-12. A second indicator of failure is the use of "levelled English" handouts for the district's LEP student population in the secondary schools. The evidence includes illustrations of such handouts and it is apparent from examining those exhibits that they are not comparable to the English language textbooks. The use of such materials is an acknowledgement by the school district that the LEP students have failed to attain a reasonable parity of participation with the other students in the educational process at the secondary school level.[84]

The court in *Keyes* ruled that under §1706 of the EEOA, the plaintiffs were entitled to "such relief as may be appropriate." In the Denver case, the court specified that the relief will include:

> . . . changes in the design of the program and in the system for delivery of services. Such changes must remedy the failure to give adequate consideration to Lau classification in the pupil assignment plan; the failure to consider the need to serve Lau C children; the lack of adequate standards and testing of the qualifications for bilingual teachers, ESL teachers, tutors and aides; the lack of adequate tests for classifying Lau A, B, and C students; the failure to provide remedial training in the reading and writing of English; the lack of adequate testing for effects and results of the remedial program provided to the students; and the absence of any standards of testing for educational deficits resulting from their lack of participation in the regular classrooms.[85]

The district court concluded its opinion in *Keyes* by making a broad observation on what its order, and, more importantly, the EEOA required:

> These changes will increase the capacity of the system. That alone will not be effective. There must be a change in the institutional commitment to the objective and a recognition that to assist disadvantaged children to participate in public education is to help them enter the mainstream of our social, economic, and political systems. The resulting benefits to the community are self-evident and the production of such benefits is the purpose of tax supported education in the United States. "Education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." (*Plyler v. Doe:* Citation omitted.) The character of the disadvantage, whether it results from racial identities or the language influences of different ethnicity, is relevant only to the methodology to be employed. Throughout this trial and in the post trial brief, the defendant district has consistently claimed that there has been a good faith effort to provide some service to every student in the district who needs assistance in gaining proficiency in English. To the extent that "good faith" is equated with a lack of discriminatory intent or an absence of a complete disregard for students who are disadvantaged by a lack of English language proficiency, the record supports the contention. That, however, is not an adequate defense to claims under 42 U.S.C. §1706. What is required is an effort which will be reasonably effective in producing the intended result of removing language barriers to participation in the instructional programs offered by the district.[86]

Gomez v. Illinois State Board of Education[87]

In 1987, the Seventh Circuit Court of Appeals issued an opinion regarding the responsibilities of State Education Agencies (SEAs) under the EEOA. The question before the Court of Appeals was the propriety of the trial court's dismissal of a class action complaint made on behalf of Spanish-speaking limited English proficient students against the State of Illinois. The complaint cited the State's failure to test students for limited English proficiency and to provide bilingual or compensatory instruction as violative of civil rights laws including the EEOA.

As a threshold matter, the Court of Appeals rejected the State's contention that immunity from suit provisions of the Eleventh Amendment barred suits against States for violations of the EEOA. The Appeals Court then proceeded to apply *Castaneda's* analytic framework to the facts available at trial. The court found that the Illinois program, based on a transitional bilingual approach, satisfied the first, "sound educational theory" test.

The second, "resources" test suggested by *Castaneda* brought into focus the "central issue" of the Gomez case:

> What obligation does §1703(f) impose on state (as opposed to local) educational agencies for the implementation of programs designed to provide LEP children with an equal educational opportunity?[88]

The court answered that question in the following way:

> We concur with the conclusion of the Ninth Circuit in *Idaho Migrant Council v. Board of Education*, 647 F.2d 69 (9th Cir. 1981), that §1703(f) requires that state, as well as local, educational agencies ensure that the needs of LEP children are met. The plaintiffs in essence alleged that the defendants have only gone through the motions of solving the problem of language barriers. Although the meaning of "appropriate action" may not be immediately apparent without reference to the facts of the individual case, it must mean something more than "no action." State agencies cannot, in the guise of deferring to local conditions, completely delegate in practice their obligations under the EEOA; otherwise, the term "educational agency" no longer includes those at the state level. Exactly what state educational agencies must do beyond establishing the minimums for implementation of language remediation programs is not at issue in the instant appeal, because the plaintiffs have done no more than allege that the defendants failed even to establish the minimums need for identifying and placing LEP children . . . Whether the plaintiffs can prove their case is a matter that must be determined on remand, not on appeal. We can only decide at this early stage of the litigation that the plaintiffs have stated a claim and, therefore, that the dismissal of the complaint was improper.[89]

VIII
LANGUAGE MINORITY CHILDREN AND SPECIAL EDUCATION

Y. S. v. School District of Philadelphia

In considering the legal responsibilities of education agencies serving language-minority students, note must be made that handicapped students, including handicapped students who are limited in their English proficiency, are protected by additional Federal laws including the Education of the Handicapped Act (EHA)[90] and Section 504 of the Rehabilitation Act of 1973.[91]

This fact was emphasized by the announcement in March 1988 of the negotiated settlement of a class action suit against the Philadelphia public schools brought on behalf of the district's 6,800 Asian students. The suit, *Y. S. v. School District of Philadelphia*,[92] alleged violations of the Fourteenth Amendment, Title VI, and the EEOA. The suit also complained that Philadelphia educational authorities were violating the rights of handicapped Asian students and parents that are guaranteed under the EHA.

For example, Y. S., one of the three students named in the suit, was a Cambodian refugee who enrolled in the Philadelphia schools in September 1982. The lawsuit alleged that partly because "he received no assistance from anyone who could speak his native language," Y. has been "unable to make substantial progress in the school." In September 1985 Y. was placed in a special education class pursuant to the district's determination that he was mentally retarded. According to the complaint, this determination was made relying on a test instrument developed for English-speaking students, and "the district employee who wrote Y's Individualized Education Program had never met Y. or his family."[93]

As reported in the March 9, 1988, edition of *Education Week*, the negotiated settlement in the Y. S. case covers a wide range of educational practices. In addition to obligating itself to recruit and train more school personnel who can communicate in the native languages of the Asian students and parents, the Philadelphia Y. S. settlement reportedly includes:

> . . . A requirement that both oral and written communications to parents be in a language they understand
>
> . . . A review of the educational program of each Asian LEP student, to be completed by the end of this year.
>
> . . . The establishment of a new position of district coordinator for the education of LEP students.
>
> . . . The development, by June, of a remedial plan to address the instructional needs of Asian LEP students, including assessment and counseling in their native language and a revised curriculum for the district's ESL program.[94]

IX
A PERSPECTIVE FOR EDUCATORS

A quarter of a century does not seem to have lessened the intent of Congress to protect the rights of national origin-minority students: rights that it established in Title VI of the Civil Rights Act of 1964. On the contrary, in 1988 Congress acted to restore its intent to deny *all* Federal assistance to school districts that violate the educational rights of students because of race or color or national origin in any of its programs. The strength of Congress's commitment can be seen in the fact that it overrode a Presidential veto on this issue. The relevance of Congressional concern, too, is illustrated by the all-too-familiar educational statistics which continue to show national origin-minority students achieving at levels significantly below the national average.

In these pages we have sought to trace the evolution of legislation, judicial decision and administrative regulation that together define the legal obligations of education agencies for the education of national origin-minority students. As the reader must appreciate, those responsibilities do not lend themselves to simple or definitive summarization. The multiple sources of legal responsibility; the concurrent, and sometimes conflicting, participation of all three branches of the federal government in defining these legal responsibilities; and the nature of federal court adjudication are just some of the factors that make this body of law both complex and dynamic.

The lack of clear guidelines or standards for program compliance with legal requirements contributes much to the complexity for those who must meet national origin-minority students' educational needs. When the Department of Health, Education and Welfare agreed in 1978 to publish formal Title VI regulations, the detailed 1975 Lau Remedies were abandoned and the proposed new regulations, published by the new Department of Education in 1980, were formally withdrawn in 1981. Since then, the Department of Education has not published new proposed compliance standards or guidelines.

Yet despite these complexities, parents and educational administrators can and must determine whether education agencies are fulfilling their legal responsibilities to national origin-minority students. Where should they turn for guidance? How should they proceed?

Any compliance assessment should involve, at the least, a review of the school district's adherence to the requirements of Title VI and the EEOA. While Title VI responsibilities may be conditioned by the number of language-minority students enrolled, the EEOA requires appropriate action by school districts serving even a single limited-English-proficient student. And where special education placements or services are involved—either through provision or omission—consideration must also be given to the requirements of the Education of the Handicapped Act and to section 504 of the Rehabilitation Act of 1973.

With respect to Title VI complaince, a good starting point is consideration of the four basic injunctions set out in OCR's memorandum of May 25, 1970:

> 1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school

district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

Accurate identification of non-English-language background students and assessment of their language proficiency is the first step which must be taken to fulfill this basic responsibility. Accurate, linguistically and culturally relevant assessment of student skills and instructional needs is also fundamental to the next two basic injunctions.

2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority children must be designed to meet such language skills needs as soon as possible and must not operate as an educational dead-end or permanent track.

This latter injunction also implies the use of accurate student assessment and program-exit procedures to determine when an individual student no longer needs language-related instructional programs or services.

And finally, according to the May 25th memorandum:

4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

This last injunction may be affected by the number of students and parents involved. Additional responsibilities regarding parent notification may also apply if special education services and programs are at issue.

Beyond the May 25th memorandum, parents and educators should look to the compliance standards and three-part test set forth in *Castaneda*. While this case concerned legal responsibilities under the EEOA, it should be noted that other courts and the OCR have found the three-part test relevant in evaluating a school district's Title VI compliance.

The affirmative responsibility imposed by the EEOA, according to *Castaneda*, is to ensure that language-minority students "attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system." And "parity of participation," according to *Castaneda*, means "not only an obligation to overcome the direct obstacle to learning which the language barrier itself poses, but also a duty to provide limited English speaking students with assistance in other areas of the curriculum where their equal participation may be impaired because of deficits incurred during participation in an agency's language remediation program."

To determine whether a school district is meeting its affirmative obligations to ensure "parity of participation," parents and school officials should apply the three-part "Theory-Practice-Results" test of *Castaneda* to their local situation. Further guidance on the application of this legal test to specific features of a district's program—such as student identification and placement, curriculum, staffing, training, program evaluation and program exiting—can be derived from *Castaneda* and other reported court decisions, many of which have been reviewed above.

Finally, where an education agency is not fulfilling its responsibilities to language-minority students, parents and educators must work together to bring about the changes required by law. To be effective, these changes may (as the court noted in 1983 *Keyes* decision) require "a change in the institutional commitment to the objective (of equal educational opportunity) and a recognition that to assist disadvantaged children to participate in public education is to help them enter the mainstream of our social, economic and political systems. The resulting benefits to the community are self-evident and the production of such benefits is the purpose of tax supported education in the United States."

NOTES

1. 42 U.S.C. 2000d
2. 110 *Cong. Rec.* 6543 (Sen. Humphrey, quoting from President Kennedy's message to Congress, June 19, 1963)
3. 33 *Fed. Reg.* 4956
4. "Memorandum from J. Stanley Pottinger, Director, OCR/DHEW to School Districts With More Than Five Percent National Origin-Minority Group Children regarding Identification of Discrimination and Denial of Services on the Basis of National Origin," May 25, 1970
5. 94 S.CT. 786 (1974)
6. *Id.* at 787
7. *Lau v. Nichols* 483 F.2d 791 (9th Cir. 1973), 793
8. *Id.* at 796 n.6.
9. *Id.* at 795
10. *Id.* at 796
11. *Id.* at 797
12. *Id.* at 799
13. *Lau v. Nichols* 94 S.Ct. 786, 788
14. *Id.*
15. *Id.* at 789
16. *Id.*
17. *Id.* at 790
18. *Id.*
19. *Id.* at 791
20. *Id.*
21. *Id.*
22. P.L. 93-380
23. 20 U.S.C. §1701-1720
24. 20 U.S.C. §1703(f)
25. 20 U.S.C. 1706
26. 499 F.2d 1147 (10th Cir. 1974)
27. *Id.* at 1149
28. *Id.* at 1149-50
29. *Id.* at 1151-52

30. *Id.* at 1153
31. *Id.* at 1154
32. 455 F. Supp. 57 (E.D.N.Y. 1978)
33. *Id.* at 60
34. *Id.*
35. *Id.* at 59-60
36. *Id.* at 60 to 61
37. *Id.* at 62-63
38. *Id.* at 63
39. *Id.*
40. *Id.*
41. *Id.* at 64
42. 480 F.Supp. 14 (E.D., N.Y. 1978)
43. *Id.* at 18
44. *Id.* at 19
45. *Id.* at 23
46. 587 F.2d 1022 (9th Cir. 1978)
47. *Id.* at 1024
48. *Id.* at 1024-25
49. *Id.* at 26-27
50. *Id.* at 1027-28
51. *Id.* at 1029-30
52. *Id.* at 1030
53. *Northwest Arctic School District v. Califano*, No. A-77-216 (D. Alaska Sept. 29, 1978)
54. 45 Fed. Reg. 52,052 (1980)
55. 648 F.2d 989 (5th Cir. 1981)
56. *Id.* at 992
57. *Id.* at 994-95
58. *Id.* at 998
59. *Id.* at 1007
60. *Id.* at 1006
61. *Id.* at 1007
62. *Id.* at 1009
63. *Id.*
64. *Id.* at 1009-10
65. *Id.* at 1011
66. *Id.* at 1013
67. *Id.* at 1014
68. *Id.*
69. *Id.* at 1015

70. OCR's Title VI compliance procedures and standards respecting language-minority students are set out in a December 3, 1985 U.S. Department of Education Office for Civil Rights document entitled "The OCR Title VI Language Minority Compliance Procedures." (Unpublished)
71. *Id.* at 2
72. *Id.*
73. *Id.* at 3
74. *Id.*
75. *Id.* at 4-6
76. James Crawford, "U.S. Enforcement of Bilingual Plans Declines Sharply," *Education Week*, Washington, DC, June 4, 1986.
77. 576 F.Supp. 1503 (D. Colorado, 1983)
78. *Id.* at 1516
79. *Id.* at 1516-17
80. *Id.* at 1517
81. *Id.* at 1518
82. *Id.*
83. *Id.*
84. *Id.* at 1519
85. *Id.* at 1520
86. *Id.*
87. 811 F.2d 1030 (7th Cir. 1987)
88. *Id.* at 1042
89. *Id.* at 1042-43
90. 20 U.S.C. 1401 et seq.
91. 29 U.S.C. 794
92. C.A. 85-6924 (E.D. PA 1986)
93. *Id.* at 6-12
94. William Snider, "Philadelphia Agrees to Address Needs of Asian Students," *Education Week*, March 9, 1988.

FOR ASSISTANCE . . .

Questions about school district compliance with legal responsibilities relative to treatment of national origin minorities may be referred to:

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